THE HISTORY OF THE ADOPTION OF SECTION I OF ARTICLE IV OF THE UNITED STATES CONSTITUTION AND A CONSIDERATION OF THE EFFECT ON JUDGMENTS OF THAT SECTION AND OF FEDERAL LEGISLATION.

The object of this paper is to sketch briefly an interesting bit of legal history. It is well worth while to discover that the favored position over foreign judgments which our own judgments possess wherever the United States has jurisdiction was deliberately intended for them, and was established by enactments which have proved sufficiently broad to meet the changing conditions of our national expansion; but it is just as much worth while to get an insight into the difficulties of construction which have been overcome. Both ends are sought in this article.

(*a*) Historical Retrospect.

Prior to the adoption of the "Articles of Confederation and Perpetual Union" by the thirteen American Colonies, the courts of one colony, in the absence of statutory provision prescribing another rule, regarded the judgments of courts of sister colonies as foreign judgments in the strict sense, *i. e.*, as only *prima facie* evidence, in many instances, of the demand recovered on, and hence subject to be re-examined on their merits and impeached for fraud, want of jurisdiction or prejudice.[1] Indeed, under the common law of England to-day, the judgments of the courts of the various colonies of Great Britain have only the standing of strictly foreign judgments when sued on in the courts of other colonies.[2] Local statutes may vary this common law rule at the pres-

[1] Hilton *v.* Guyot (1895) 159 U. S. at pp. 180–181; Bissell *v.* Briggs (1813) 9 Mass. 462, 464, 465; Story on the Constitution §§ 1306, 1307.

[2] 13 Am. and Eng. Ency. of Law (2nd Ed.) p. 976, Note 1, and cases cited. See also Smith *v.* Lathrop (1863) 44 Pa. St. 326 at pp. 329, 330 and cases cited.

ent time in some colonial jurisdictions, but prior to the adoption of the Articles of Confederation only a few of the American colonies had passed statutes "by which judgments rendered by a court of competent jurisdiction in a neighboring colony could not be impeached."[1] The province of Massachusetts Bay was one. It was governed in the matter by its provincial act of 14 George III, c. 2, which provided that judgments rendered in the courts of neighboring colonies might be sued on in Massachusetts in actions of debt "and that on a plea of *nul tiel record* the records of those judgments attested by the clerk of the court rendering the same should be good and sufficient evidence of the records. By this statute, judgments rendered in the courts of the neighboring colonies could not be here [in Massachusetts] impeached, provided the courts rendering those judgments had competent jurisdiction."[2] The inconvenience caused "by debtors, after judgments against them [in one colony] removing with their effects into the then province of Massachusetts Bay, before satisfying those judgments"[2] and then impeaching the justice of the judgments when sued on in Massachusetts, gave rise to this provincial Act of 14 George III, c. 2, and the same inconvenience in the different colonies caused the insertion of a provision about judgments in the Articles of Confederation.

When in 1778 the American colonies formed the confederacy of "The United States of America," "it was seen by the wise men of that day that the powers necessary to be given to the Confederacy and the rights to be given to the citizens of each State in all the States would produce such intimate relations between the States and persons, that the former would no longer be foreign to each other in the sense that they had been as dependent provinces; and that, for the prosecution of rights in courts, it was proper to put an end to the uncertainty upon the subject of the effect of judgments obtained in the different States. Accordingly in the Articles of Confederation there was this clause: 'Full faith and credit shall be given in each of these States

[1] Hilton *v.* Guyot (1895) 159 U. S. at p. 181.

[2] Bissell *v.* Briggs (1813) 9 Mass. at p. *465.

to the records, acts and judicial proceedings of the courts and magistrates of every other State.' "[1]

Under the Articles of Confederation, it seems that "a question then arose as to the mode of authentication "[2] which was left by the Articles unprovided for, so when the confederacy was replaced by the Union, the constitution of the United States contained the still stronger provision:

"Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."[3]

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[1] McElmoyle *v.* Cohen (1839) 13 Pet. at p. 325; Articles of Confederation Art. IV, last paragraph.

The full faith and credit clause of the Articles of Confederation was adopted by the Continental Congress on Nov. 12, 1777, without division, and "It was then moved to add, 'and an action of debt may be commenced in a court of law of any state for the recovery of a debt due on judgment of any court in any other state; provided the judgment creditor shall give bond with sufficient sureties before the said court in which the action shall be brought, to answer in damages to the adverse party, in case the original judgment should be afterwards revised and set aside, and provided the party against whom such judgment may have been obtained, had notice in fact of the service of the original writ upon which such judgment shall be founded'," but the motion to add was voted down. 2 Journals of Congress (1777–1778) at p. 325.

The full faith and credit clause of the Articles of Confederation necessarily permitted actions of debt on judgments, and it was held that notice in fact was necessary to give a personal judgment the protection of the clause (See Phelps *v.* Holker (Pa. 1788) 1 Dall. 261), so the only part of the motion to add which did not go into effect was the requirement of a bond.

[2] Haines J. in Moulin *v.* Ins. Co. (1853) 24 N. J. Law at p. 239.

[3] U. S. Const. Art. IV, Sec. 1. The history of the clause in the federal constitution was as follows: In the draft of the constitution reported by the committee of five on Aug. 6, 1787, there was the following provision:

"Art. XVI. Full faith shall be given in each state to the acts of the legislatures, and to the records and judicial proceedings of the courts and magistrates of every other state."

1 Elliott's Debates (2nd Ed) p. 229.

Doc. Hist. Const. of U. S. of America (Dept. of State 1900) Vol. III, p. 456.

This article came up for discussion on Aug. 29, 1787, and the following is Madison's full account of the proceedings:

"Wednesday August 29th, 1787.

In Convention:

"Art. XVI taken up.

"Mr. Williamson moved to substitute in place of it, the words of the articles of confederation on the same subject. He did not understand precisely the meaning of the article.

"Mr. Wilson and Doc'r Johnson supposed the meaning to be that judgments in one state should be the ground of actions in other states. * * *

"Mr. Pinkney moved to commit Art. XVI with the following proposition, 'To establish uniform laws upon the subject of bankruptcies, and

respecting the damages arising on the protest of foreign bills of exchange.

"Mr. Ghorum was for agreeing to the article and committing the ['motion' stricken out] proposition.

"Mr. Madison was for committing both. He wished the Legislature might be authorized to provide for the *execution* of judgments in other states under such regulations as might be expedient. He thought that this might be safely ['regulated' stricken out] done, and was justified by the nature of the Union.

"Mr. Randolph said there was no instance of one nation executing judgments ['of' written upon 'in'] the courts of another nation. ['He' written upon 'he']. He moved the following proposition:

"'Whenever the Act of any state, whether Legislature, Executive or Judiciary, shall be attested and exemplified under the seal thereof, such attestation and exemplification shall be deemed in other states as full proof of the existence of that act—and its operation shall be binding in every other state, in all cases to which it may relate, and which are within the cognizance and jurisdiction of the state, wherein said act was done.'

"On the question for committing Art. XVI with Mr. Pinkney's motion "N. H. no; Mass. no; C't. ay; N. J. ay; Pa. ay; Del. ay; Md. ay; Va. ay; N. C. ay; S. C. ay; Geo. ay.

"The motion of Mr. Randolph was also committed nem con:

"Mr. Gov'r Morris moved to commit also the following proposition on the same subject.

"'Full faith ought to be given in each state to the public acts, records, and judicial proceedings of every other state; and the legislature shall by general laws determine the proof and effect ['thereof, stricken out] of such acts, records and proceedings' and it was committed nem contrad.

"The committee appointed for these references were Mr. Rutlidge, Mr. Randolph, Mr. Gorham, Mr. Wilson, and Mr. Johnson."

Doc. Hist. of Const. of U. S. of America (Dept. of State, 1900) Vol. III, pp. 634-6.

5 Elliott's Debates p. 488 abbreviates the account.

On Sept 1, 1787 the foregoing committee recommended to "insert the following as the 16th Article namely:—

"'Full faith and credit ought to be given in each state to the public acts, records and judicial proceedings of every other state; and the legislature shall by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect which judgments obtained in one state shall have in another.'"

1 Elliott's Debates (2nd Ed) p. 281.

Doc. Hist. of Const. of the U. S. of A. Vol. I, p. 174, Vol. III p. 662.

Two days after, the final discussion took place, as follows:

"Monday Sept. 3, 1787.

"In convention, Mr. Gouverneur Morris moved to amend [the Report concerning] the respect to be paid to acts, records, etc., of one state in other states (see the 1st of September) by striking out 'judgments obtained in one state shall have in another' and to insert the word 'thereof' after the word 'effect.'

"Col. Mason favored the motion, particularly if the 'effect' was to be restrained to judgments and judicial proceedings.

"Mr. Wilson remarked that if the legislature were not allowed to *declare the effect* the provision would amount to nothing more than what now takes place among all independent nations.

"Dr. Johnson thought the amendment as worded would authorize the general legislature to declare the effect of legislative acts of one state in another state.

"Mr. Randolph considered it as strengthening the general objection against the plan, that its definition of the powers of government was so loose as to give it opportunities of usurping all the state powers. He was

"This section was intended to give the same conclusive effect to the judgments of all the states so as to promote certainty and uniformity in the rule among them."[1]

"This section has three distinct objects:

"1. To declare that full faith and credit shall be given in each state to the records etc. in every other state. 2. The manner of authenticating such records, etc.; and, 3, their effect when so authenticated. The first is declared and established by the constitution itself, and was to receive no aid, nor was it susceptible of any qualification by the legislature of the United States. The second and third objects of the section were expressly referred to the legislature of the union to be carried into effect in such manner as to that body might seem right."[2]

It will be noticed that the chief difference between the provision in the Articles of Confederation and that in the United States Constitution is, that under the constitution Congress can fix the method of proving judicial acts, and can declare their effect when so proved, whereas, under the Articles of Confederation, Congress could not provide the method of authentication, and "could not legislate upon what should be the effect of a judgment obtained in one state in the other states."[3]

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for not going further than the report, which enables the legislature to provide for the effect of *judgments*.

"On the amendment, as moved by Mr. Gouverneur Morris:

"Massachusetts, Connecticut, New Jersey, Pennsylvania, North Carolina, South Carolina, ay 6; Maryland, Virginia, Georgia, no 3.

"On motion of Mr. Madison, the words 'ought to' were struck out and 'shall' inserted; and 'shall' between 'legislature' and 'by general laws' struck out and 'may' inserted, nem. con.

"On the question to agree to the report as amended, viz.,

"'Full faith and credit shall be given in each state to the public acts, records and judicial proceedings, of every other state; and the legislature may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof'

"it was agreed to without a count of the states."

5 Elliott's Debates (2nd Ed) p. 504.

Doc. Hist. of Const. of U. S. of A., Vol. III, pp. 663–4.

Later, the committee "to revise the style of and arrange the articles," changed the word "legislature" to "congress" and numbered the clause Art. IV, Sec. 1, instead of Art. XVI,

Art. IV, Sec. 1 of the U. S. Const. was Art. IV, Sec. 1 of the Confederate Const. adopted in 1861. See p. 730 of Ford's Edition of the Federalist.

[1] Gray J. in Atherton *v.* Atherton (1900) 181 U. S. at p. 160.

[2] Washington J. in Green *v.* Sarmiento (1811) 3 Wash. (C. C.) 17 at p. 21.

[3] McElmoyle *v.* Cohen (1839) 13 Pet. at p. 326.

The Federalist supported the full faith and credit clause of the constitution in the following language:

"The power of prescribing by general laws the manner in which the public acts, records and judicial proceedings of each state shall be proved

The very first Congress of the United States exercised some of its power under this section of the federal constitution by passing the following act, approved May 26, 1790:[1]

Be it Enacted etc., "That the acts of the legislatures of the several states shall be authenticated by having the seal of their respective states affixed thereto: that the records and judicial proceedings of the courts of any state shall be proved or admitted in any court within the United States by the attestation of the clerk, and seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings authenticated as aforesaid shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the state from whence the said records are or shall be taken."

This act was later supplemented by one approved March 27, 1804, which prescribed the authentication of records, etc., not appertaining to a court, and then continued:

"Sec. 2. And Be It Further Enacted, that all the provisions of this act, and *the act to which this is a supplement*, shall apply as well to the public acts, records, office books, judicial proceedings, courts and offices of the respective territories of the United States and countries subject to the

and the effect they shall have in other states, is an evident and valuable improvement on the clause relating to this subject in the Articles of Confederation. The meaning of the latter is extremely indeterminate, and can be of little importance under any interpretation which it will bear. The power here established may be rendered a very convenient instrument of justice, and be particularly beneficial on the borders of contiguous states where the effects liable to justice may be suddenly and secretly translated, in any stage of the process within a foreign jurisdiction". (Federalist No. 42 [41] written by Madison. See Ford's Edition p. 279).

Madison is thus shown both to have been inappreciative of the clause in the Articles of Confederation and also to have favored the clause in the constitution for the very reasons which led Massachusetts to adopt her provincial act on the subject.

[1] 1 U. S. Stat. at Large 122.

The Act was probably approved May 6, 1790, instead of May 26th. The bill was introduced into the House of Representatives April 28 and on that day twice read and committed (2 Annals of Congress, p. 1548). On April 30 it was considered in committee of the whole and the House ordered it engrossed for a third reading (Ibid. p. 1550). May 3 the engrossed bill was read the third time and passed (Ibid. p. 1550). The same day it was sent to the Senate and there read the first time (1 Annals of Congress p. 969). May 4 it was read the second time in the Senate (Ibid. p. 970). May 5 it was read the third time in the Senate and passed (Ibid. p. 970). The same day the House was notified by the Senate that the bill had passed (2 Annals of Congress p. 1552). The bill therefore was probably signed May 6, 1790, but appears in the statutes as approved May 26, 1790.

jurisdiction of the United States as to the public acts, records, office books, judicial proceedings, courts and offices of the several states."[1]

(*b*) LEGAL CONSTRUCTION.

The question of the effect of the constitutional provision and of the acts of May 26, 1790, and March 27, 1804, caused much conflict of opinion. Many state courts held that the constitution and the statutes intended merely to provide a mode of authentication and proof of the records and judicial proceedings of other States, and consequently did not mean to confer upon the judgments of courts of sister States any greater rights than were accorded foreign judgments at the common law. They held, in other words, that the federal constitution and statutes left sister-state judgments like other foreign judgments, only *prima facie* evidence of the matter adjudged.[2]

But in 1813 the United States Supreme Court decided[3] that by virtue of the constitution and laws of the United States, the judgment of a State court which has jurisdiction is conclusive evidence in every court in the United States of the matter adjudged, and that decision is still law. The court devoted its attention in that case particularly to the argument that the act of May 26th, 1790, did not exercise the constitutional power of Congress to declare the

[1] 2 U. S. Stat. at Large pp. 298–9.

The act of 1790 and the part of Sec. 2 of the act of 1804 applicable to judgments appear now as § 905 of the Revised Statutes of the United States, which section reads as follows:

"§ 905. The acts of the legislature of any state or territory, or of any country subject to the jurisdiction of the United States shall be authenticated by having the seals of such state, territory or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country shall be proved or admitted in any other court within the United States, by the attestation of the Clerk and the seal of the Court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the States from which they are taken."

The Annals of Congress do not give any of the debates on either of the bills embodied in this Section. They seem to have been passed as a matter of course.

[2] See cases collected in margin of p. 185 of 159 U. S.; with this view Chief Justice Marshall seems at first to have coincided; Peck *v.* Williamson (1813) Fed. cases No. 10896; see Hilton *v.* Guyot (1895) 159 U. S. at p. 182; but in 1818 he wrote the opinion in Hampton *v.* McConnell (1818) 3 Wheat. 234, affirming Mills *v.* Duryee (1813) 7 Cranch 481.

[3] Mills v. Duryee (1813) 7 Cranch 481.

effect of authenticated judgments, and in reference to that said, speaking through Story, J.:

"It is argued that this act provides only for the admission of such records as evidence but does not declare the effect of such evidence when admitted. This argument cannot be supported. The act declares that the record duly authenticated shall have such faith and credit as it has in the state court from whence it is taken. If in such court it has the faith and credit of evidence of the highest nature, namely, record evidence, it must have the same faith and credit in every other court. Congress have therefore declared the effect of the record by declaring what faith and credit shall be given to it.

"It remains only then to inquire in every case what is the effect of a judgment in the State where it is rendered."[1]

Under Mills *v.* Duryee and subsequent cases following it a State judgment is placed on a different footing in other States from that accorded to a strictly foreign judgment. It is not merely *prima facie* evidence, but conclusive evidence of every matter properly adjudicated, and it has other advantages, to be gone into later.

Then again, there were some judges who held that the first part of the full faith and credit clause of the federal constitution was not self-executing, and that therefore we must look to the acts of Congress alone to find out the effect or degree of force which judicial proceedings are to have outside of the States where they take place.[2]

Other judges, however, followed Judge Story in holding that the first sentence of the full faith and credit clause was self-executing and rendered the judgments of courts of sister-states conclusive, when properly proved, regardless of the acts of Congress.[3]

While the proposition has never been expressly decided by the Supreme Court of the United States, the *dicta* are all to the effect that the first sentence of the full faith and credit clause is self-executing. For instance, in Huntington *v.* Attrill[4] the court approved Judge Story's doctrine, as follows:

[1] Mills *v.* Duryee (1813) 7 Cranch 481 at p. 484.

[2] Warren *v.* Flagg (1824) 2 Pick. 448; Robinson *v.* Prescott (1828) 4 N. H. 450; Snyder *v.* Wise (1848) 10 Pa. St. 157;

[3] 2 Story Const. §§ 1302–13; Stockwell *v.* Coleman (1859) 10 Ohio St. 313; Kean *v.* Rice (1824) 12 S. & R. 203; Peel *v.* January (1880) 35 Ark., 331; Green *v.* Sarmiento (1811) 3 Wash. (C. C.) 17 at p. 21.

[4] 146 U. S. 657, at pp. 684–5.

"This clause of the constitution like the less perfect provision on the subject in the Articles of Confederation * * * * had three distinct objects: first, to declare, and by its force establish that full faith and credit should be given to the judgments of every other State; second, to authorize Congress to prescribe the manner of authenticating them; and third, to authorize Congress to prescribe their effect when so authenticated. Story on the Constitution §§ 1307, 1308."

And in McElmoyle *v.* Cohen,[1] the Court by Wayne J., said:

"The authenticity of a judgment and its effect depend upon the law made in pursuance of the Constitution; the faith and credit due to it as the judicial proceeding of a State is given by the Constitution independently of all legislation."

If the full faith and credit clause is self-executing, there is no doubt that the full faith and credit properly given the judgment in the State where it is rendered, for nothing short of that could be *full* faith and credit.[2] In any event the fact remains that but for the full faith and credit clause of the United States constitution, the judgments of the courts of sister-states—which for brevity we shall denomi-

[1] (1839) 13 Pet. at p. 324–5.

[2] The question whether the first sentence of the full faith and credit clause in the constitution is self-executing is raised in practice by asking whether the judgments of Justices of the Peace rendered in one State are entitled to full faith and credit in another. The doubt on the matter arises in this way:

Under the Act of Congress of May 26, 1790, judgments are authenticated as we have seen "by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form."

U. S. Rev. Stats. § 905.

Courts of Justices of the Peace, however, are not usually so constituted as to have seals or clerks, and therefore most cases hold that they are not within the act.

Blackwell *v.* Glass (1884) 43 Ark. 209; Warren *v.* Flagg (1824) 2 Pick. 448; Graham *v.* Gregg 3 Harr. (Del.) 408; Snyder *v.* Wise (1848) 10 Pa. St. 157; Robinson *v.* Prescott (1828) 4 N. H. 450; Taylor *v.* Barron (1855) 30 N. H. 78; Wood *v.* Wood (1880) 78 Ky. 624; McElfatrick *v.* Taft (1873) 10 Bush. 160; King *v.* Van Gilder (Vt. 1797) 1 D. Chip. 59; Clark *v.* Parsons (So. Car. 1838) Rice 16.

But even though it be admitted that the judgments of Justices of the Peace cannot be authenticated under the Acts of Congress, they can be proved in other ways.

McElfatrick *v.* Taft (Ky. 1873) 10 Bush 160; Ellsworth *v.* Barstow (Pa. 1838) 7 Watts 314.

Even judgments of courts of record of sister-states may be proved in common law modes—the authentication prescribed by Congress not being exclusive (Dean *v.* Chapin (1871) 22 Mich. 275; In Re Ellis Estate (1893) 55 Minn. 401; Etz *v.* Wheeler (1886) 23 Mo. App. 449)—and the States

may fix other modes of proof which shall not interfere with authentication under the acts of Congress.

After the judgment of a Justice of the Peace has been proved in other ways—for instance by admissions in pleadings, by the production of the original minutes or by a copy of the minutes and the oath of witnesses who have compared the copy with the original (Blackwell *v.* Glass (1884) 43 Ark. 209)—the question arises, what is its effect?

The cases cited above to the proposition that such a judgment is not within the act of May 26, 1790, all agree that the effect is exactly the same as that of a strictly foreign judgment; viz., that the judgment is ordinarily only *prima facie* evidence.

See also Evans *v.* Cleary (1889) 125 Pa. 204.

Other cases hold that once the jurisdiction of the justice is shown, the effect of such a judgment is just the same as that of a judgment of a court of record authenticated under the Act of Congress. These last cases all go on the ground that the first sentence of the full faith and credit clause in the U. S. Constitution is self-executing and that once a judgment is proved, no matter how, to be a valid sister-state judgment, it must by virtue of the constitutional provision itself be given full faith and credit, i. e. such faith and credit as it has in the State where it was rendered.

Silver Lake Bk. *v.* Harding (1836) 5 Ohio 546; Pelton *v.* Plattner (1844) 13 Ohio 209; Stockwell *v.* Coleman (1859) 10 Ohio State 33; Carpenter *v.* Pier (1859) 30 Vt. 81; Starkweather *v.* Loomis (1830) 2 Vt. 573; Thomas *v.* Robinson (1829) 3 Wend. 267; Lawrence *v.* Gaultney (S. C. 1839) Cheves 7; Case *v.* Huey (1881) 26 Kas. 553; Draggoo *v.* Graham (1857) 9 Ind. 212; Menken *v.* Brinkley (1895) 94 Tenn. 721; Kopperl *v.* Nagy (1890) 37 Ill. App. 23 (*semble*); Howland *v.* Chicago, R. I. & P. Ry. Co. (1896) 134 Mo. 474 (*semble*); Roberts *v.* Hinkle (Ky. 1896) 43 S. W. 233 (*semble*).

The Constitution requires "full faith and credit" to be "given in each state to the public acts, records and *judicial proceedings* of every other state," and judgments of Justices of the Peace are of course judicial proceedings as much as judgments of courts of record are. If as the cases last cited hold, and as seems to be the better view, this provision is self executing, the judgments of Justices of the Peace of another State, if once proved to be such and to be within the jurisdiction of the justice are as fully protected as are duly authenticated judgments of courts of record.

A few cases say that whether the full faith and credit clause is self-executing or not (usually they hold not) a properly proved judgment of a Justice of the Peace of a sister-state should be given the same conclusive effect as is given to judgments of courts of general jurisdiction authenticated under the Act of Congress.

Glass *v.* Blackwell (1886) 48 Ark. 50; Gay *v.* Lloyd (Iowa, 1847) 1 Greene, at p. 85; Danforth *v.* Thompson (1872) 34 Iowa 243; Banister *v.* Campbell (1903) 138 Cal. 455 (*semble*).

Such a position is of course defensible on the ground that judgments of sister-states should be given superior rights over strictly foreign judgments, because of the greater comity which exists between sister-states. "The intimate union of these states, as members of the same great political family; the deep and vital interests which bind them so closely together; should lead us, in the absence of proof to the contrary, to presume a greater degree of comity and friendship and kindness towards one another, than we should be authorized to presume between foreign nations." Bank of Augusta *v.* Earle (1839) 13 Pet., 519, at p. 590.

Considering, however, that where a judge of a court of record in another state is also *ex officio* clerk thereof, the judgment of that court may be authenticated under the acts of Congress by a single certificate in proper form signed by him in each capacity (Low *v.* Burrows (1859) 12 Cal., 181; Keith Bros. & Co. *v.* Stiles (1896) 92 Wis., 15; Welder *v.*

nate simply sister-state judgments—would be foreign when proved in other states.[1]

McComb (1895) 10 Tex. Civ. App. 85), a query arises as to whether the courts that have held that the judgments of a Justice of the Peace cannot be authenticated under the acts of May 26, 1790, and March 27, 1804, were not too hasty in so deciding. The better view would seem to be that the judgment of a Justice of the Peace can properly be authenticated under those Acts.

Scott *v.* Cleveland (Ky. 1825) 3 T. B. Mon., 62; Case *v.* Huey (1881) 26 Kas., 553; See Swift J., in Bissell *v.* Edwards (Conn. 1812) 5 Day 363, at p. 366.

The question is of comparatively little practical importance to-day, because the protection of the Constitution and of the acts of Congress may be obtained for Justice's judgments in another way. In almost every State, if not in every State, it is provided by statute that a transcript of any judgment of a Justice of the Peace, duly certified by the Justice, may be filed with a court of record in the county where the Justice holds court, and upon the proper entries being made in the office of the clerk of the court of record, execution may issue thereon from said court of record and the said judgment may become a lien in the same way as judgments of the court of record. Where such statutory provisions exist and are complied with, the Justice's judgment so treated can be authenticated under the act of Congress as a judgment of the court of record and is fully protected by the full faith and credit clause of the constitution and the acts of Congress.

Rowley *v.* Carron (1887) 117 Pa. 52; 11 Atl., 435; Bright *v.* Smitten (1891) 10 Pa. Co. Ct. Rep. 647; Upham *v.* Damon (1866) 94 Mass. (12 Allen) 98. (But while such Justice Court judgments are thus made judgments of courts of record for the purpose of authentication under the Acts of Congress, of issuing execution, etc., they are still Justice Court judgments. Allen v. Arguelles (1831) Fed. Cas. No. 213 (4 Cranch C. C. 170); Pierce *v.* Davidson (1894) 58 Mo. App., 106; Ellis *v.* White (1854) 25 Ala., 540.)

A way thus exists to give to judgments of Justices of the Peace the protection of the U. S. Constitution, and laws, by resort to a court of record; though it is submitted, for the reasons above given, that they are entitled to such protection in the absence of any such procedure.

The question whether the constitutional requirement is self-executing will, some day, come before the United States Courts in a case where a demurrer is interposed to a complaint which alleges a sister-state judgment but does not proffer a copy authenticated under the acts of Congress. There the judgment will be admitted, but not being "so authenticated" as required by Sec. 905 of the Rev. Stats. it cannot be given any greater faith and credit than would be accorded to a strictly foreign judgment, unless the first sentence of the full faith and credit clause is self-executing. There seems to be no reason to doubt that under such circumstances the sister-state judgment would be given the full benefit of the constitutional provision. Though the report of the case does not show it, that was just what was done in the case of Keyser *v.* Lowell (1902) 117 Fed. 400.

[1] Dorsey *v.* Maury (1848) 18 Miss. (10 Smedes & M.) 298; Smith *v.* Lathrop (1863) 44 Pa. St. 326; Pritchett *v.* Clark, 3 Harr. (Del.) 517; Eastern Townships Bank *v.* Beebe (1880) 53 Vt. 177; Bonesteel *v.* Todd (1861) 9 Mich., 371, at p. 375; Thurber *v.* Blackbourne, (1818) 1 N. H. 242.

See Buckner *v.* Finley (1829) 2 Peters 586, which held that a bill of exchange drawn in one State on a person in another is a foreign bill of exchange.

And see cases denying to judgments of Justices of the Peace conclusive effect, cited in preceding note.

So closely akin to the question of whether the full faith and credit clause is self-executing as to deserve consideration with it, is the question of whether the acts of Congress of May 23, 1790 and of March 27, 1804, derive their whole validity from that clause. The former question, as we have just seen (in note 20, p. 478), involved the standing of judgments of sister-state Justices' Courts and other courts not courts of record, and also of those sister-state judgments of courts of record which have been proved in other ways than by the method authorized by the acts of Congress; but the latter question moots the standing of United States Court judgments in the different States; of territorial judgments in the States, sister-territories and insular possessions and of the judgments of courts of our insular possessions in the States, territories and sister-insular possessions.

For a long time it was supposed that the acts of May 26th, 1790 and of March 27, 1804, depended wholly on the full faith and credit clause of the United States Constitution for their validity; and that, as "state" in that clause means only territory admitted to statehood, the different States were not bound to regard the judgments of courts of the District of Columbia or of the territories as within the acts or protected by the United States Constitution. On this ground, it was decided in an early case that the judgments of courts of the District of Columbia were not within the full faith and credit clause of the Constitution, and were, therefore, on no better footing in a State than foreign judgments.[1] But in the case of Embry *v.* Palmer, the United States Supreme Court decided that while judgments of the District of Columbia were not within the full faith and credit clause of the Constitution, Congress had power to prescribe their effect in the different States under the general judicial power of the United States and had done so in the Acts of May 26, 1790 and March 27, 1804, which require that judgments must be given "such faith and credit as they are entitled to in the courts of the State, territory or other country subject to the jurisdiction of the United States from which they are taken."[2]

[1] Draper's Executors *v.* Gorman (1837) 8 Leigh 628.

[2] Embry *v.* Palmer (1882) 107 U. S. 3; See Hughes *v.* Davis (1855) 8 Md. 271; Duvall *v.* Fearson (1862) 18 Md. 502.

As the United States Supreme Court in the case of Mills *v.* Duryee,[1] had decided that State judgments must be regarded as conclusive in the courts of the District of Columbia, the converse, settled in Embry *v.* Palmer, completed the circle. While the case of Embry *v.* Palmer only decided the law for the District of Columbia it governs the cases of the territories proper and of countries appurtenant to the United States.[2] It has been decided that the judgments of the courts of the Indian nations are entitled to the same faith and credit as sister-state judgments.[3]

The following language of the court in Embry *v.* Palmer is particularly instructive:

"So far as this statutory provision relates to the effect to be given to the judicial proceedings of the states, it is founded on Art. IV, Sec. 1 of the constitution, which, however, does not extend to the other cases covered by the statute. The power to prescribe what effect shall be given to the judicial proceedings of the courts of the United States is conferred by other provisions of the constitution such as those which declare the extent of the judicial power of the United States, which authorize all legislation necessary and proper for executing the powers vested by the constitution in the government of the United States or in any department or officer hereof and which declare the supremacy of the authority of the National Government within the limits of the constitution. As part of its general authority the power to give effect to the judgments of its courts is co-extensive with its territorial jurisdiction. That the Supreme Court of the District of Columbia is a court of the United States results from the right of exclusive legislation over the district which the constitution has given to Congress. Accordingly the judgments of the courts of the United States have invariably been recognized as upon the same footing, so far as concerns the obligation created by them, with domestic judgments of the states wherever rendered and wherever sought to be enforced."[4]

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[1] (1813) 7 Cranch 481.

[2] That a territorial judgment must be given full faith and credit when sued on in a State court was decided in Susenbach *v.* Wagner (1889) 41 Minn. 108.

[3] Mehlin *v.* Ice (1893) 56 Fed. 12; Mackey *v.* Coxe (1855) 18 How. 100; Standley *v.* Roberts (1894) 59 Fed. 836; See James *v.* James (1891) 81 Tex. 373.

[4] Embry *v.* Palmer (1882) 107 U. S, 3 at pp. 9-10.

This language has considerable bearing on the question, whether the judgments of courts of the Confederate States rendered during the civil war were protected by the Federal Constitution and statutes. The United States Supreme Court held that where the judgments themselves were not hostile in their purpose or mode of enforcement to the authority of the national government and did not impair or tend to impair the constitutional rights of citizens they were protected.

Horn *v.* Lockhart (1873) 17 Wall. 570; See Texas *v.* White (1868) 7 Wall. 700; Sprott *v.* U. S. (1874) 20 Wall. 459; Lockhart *v.* Horn (1871) 1 Woods 628; Williams *v.* Bruffy (1877) 96 U. S. 176.

The acts of May 26, 1790 and March 27, 1804, therefore determine the effect of the judgments of the United States Courts in the different States and Territories when sought to be enforced in other States and Territories of the United States as well as the effect of strictly sister-state judgments; but they determine the effect of other than strictly sister-state judgments by virtue of other constitutional provisions than Art. IV, Sec. 1. A judgment of a federal court of record in Porto Rico or the Philippines must be given in any state as much effect as would be given to a judgment of a court of record of a neighboring state of the Union, not because of the full faith and credit clause of the federal constitution, but because of the general powers of Congress exercised in the Acts of May 26, 1790 and March 27, 1804.[1]

It has repeatedly been laid down by the United States Supreme Court that under these acts the judgments and decrees of courts of the United States are entitled to the same sanctity and effect in the courts of each state as judgments and decrees of the courts of other States would be, "nothing more but nothing less";[2] for "The laws of the United States are laws in the several states and just as much binding on the citizens and courts thereof as the state laws are"[3] and the judgments of United States courts are just as binding as those of the state courts and in some cases more so.[3] It must be admitted, however, that under a

[1] A judgment of a Justice of the Peace in a Territory, say in New Mexico, would raise squarely the question of whether the acts of May 26, 1790 and March 27, 1804, cover such judgments, for the full faith and credit clause of the constitution even if self executory does not cover territorial judgments, and territorial Justice of the Peace judgments if not covered by the acts of May 26, 1790 and March 27, 1804, are no better off in other states and territories than strictly foreign judgments.

[2] Metcalf *v.* Watertown (1894) 153 U. S. 671 at p. 676; Crescent Live Stock Co. *v.* Butchers Union (1887) 120 U. S. 141 at p. 147; Dupasseur *v.* Rocherau (1874) 21 Wall 130 at p. 135; Hancock Natl. Bk. *v.* Farnum (1900) 176 U. S. 640 p. 645; See Galpin *v.* Page (1874) 3 Sawyer 93, Fed. cases 5206.

And judgments of the United States courts are properly authenticated in the manner prescribed by those acts.

O'Hara *v.* Mobile & O. R. R. Co. (C. C. A., 1896) 76 Fed. 718.

"But it is equally well settled that a right claimed under the Federal constitution finally adjudicated in the Federal courts, can never be taken away or impaired by State decisions. The same reasoning which permits to the States the right of final adjudication upon purely state questions requires no less respect for the final decisions of the Federal courts of questions of national authority and jurisdiction." Deposit Bank *v.* Board of Councilmen of Frankfort (1903) 24 Sup. Ct. Rep. 154 at p. 160.

[3] Clafflin *v.* Hauseman Assignee (1876) 93 U. S. 130 at p. 136.

strict construction, the acts of May 26, 1790 and March 27, 1804, do not require state courts to give full faith and credit to judgments of United States courts and that it is somewhat judicial legislation for the United States Supreme Court to exact full faith and credit for such judgments.[1]

Under § 905 of the Revised Statutes of the United States, if it stood alone, it might be questioned whether the judgments of the State courts stood on any better footing in Porto Rico and the Philippines than strictly foreign judgments do, for that simply provides that such judgments, when authenticated, as in the act required " shall have the same faith and credit given to them in *every court within the United States* as they have by law or usage in the courts of the states from which they are taken" and under Downes *v.* Bidwell [2] and subsequent cases, it is doubtful if Porto Rican and Philippine Courts are courts within the United States. But under a familiar rule of statutory interpretation we are authorized to look at the original acts of May 26, 1790 and March 27, 1804, to see what was meant by the words " within the United States" in § 905, the phrase being ambiguous.[3] When we do so, we discover that the act of March 27, 1804, extended the act of May 26, 1790, to cover the courts and judicial proceedings of countries subject to the jurisdiction of the United States as fully as the courts and judicial proceedings of the States,[4] and that therefore the language of the revisers of the Federal Statutes must be broadened by construction so as to give State and Territorial judgments the same effect in countries appurtenant to the United States and subject to its juris-

[1] See O'Hara *v.* Mobile & O. R. Co. (1896, C. C. A.) 76 Fed. 718, and note in 21 C. C. A. Rep. 478–9.

[2] (1900) 182 U. S. 244.

[3] " When the meaning is plain, the courts cannot look to the statutes which have been revised to see if Congress erred in that revision, but may do so when necessary to construe doubtful language used in expressing the meaning of Congress." U. S. *v.* Bowen (1879) 100 U. S., 508, 513.

See U. S. *v.* Le Bris (1886) 121 U. S. 278, where original act was referred to in order to determine the meaning of the words " Indian Country."

See also U. S. *v.* Hirsch (1879) 100 U. S. 33, 35; U. S. *v.* Lacher (1890) 134 U. S., 624; Dwight *v.* Merritt (1891) 140 U. S. 213; Campbell *v.* Haverhill (1895) 155 U. S. 610; Bate etc. *v.* Sulzberger (1895) 157 U. S. at 33, 39.

[4] See acts quoted in full *supra*, p. 475.

diction, as they would be given in a State of the Union. For the same reason the word "States" in the same phrase "shall have the same faith and credit given to them in every court within the United States as they have by law or usage in the courts of the *States* from which they are taken," must be enlarged to mean "States, Territories or countries appurtenant to the United States and subject to its jurisdiction," so as to give to the judgments of the Territories and of our insular possessions the same faith and credit in the courts of the different States, other Territories and other insular possessions that they have at home.[1]

Having thus seen that the full faith and credit clause of the Federal constitution and the Acts of Congress of May 26, 1790 and March 27, 1804, were adopted for the express purpose of putting State and Territorial judgments on a favored footing over strictly foreign judgments when pleaded and proved in courts within the United States or within countries subject to its jurisdiction, and that the purpose was accomplished, it remains for us to consider briefly the exceptions which have been made to the general proposition that sister-state judgments (including thereunder Territorial and other judgments favored by the acts of Congress) are conclusive evidence, while strictly foreign judgments are only *prima facie* evidence, of the matter adjudged.

The first thing to notice is that unless tainted by fraud certain strictly foreign judgments, rendered by courts having jurisdiction, are as conclusive as are sister-state judgments. Such favored strictly foreign judgments were grouped by Mr. Justice Gray of the United States Supreme Court as follows:[2]

1.—Judgments in *rem* adjudicating the title to a ship or other moveable property within the custody of the court.

2.—Judgments that are not contrary to the policy of the law of the State which is asked to enforce them and that affect the status of persons, among which judgments are decrees confirming and dissolving a marriage.

3.—Judgments under which a person has been compelled to pay money (so far at least as to prevent him from having

[1] Sussenbach *v.* Wagner (1889) 41 Minn. 108.

[2] Hilton *v.* Guyot (1895) 159 U. S. at pages 167-168.

to pay again, or as to allow him to recover on a promise of indemnity).

4.—Judgments discharging the obligations contracted in the foreign country between citizens or residents thereof.

But even these strictly foreign judgments are favored wholly because of comity. They do not stand on the constitutional and statutory right which sister-state judgments do. What comity sustains, unfriendliness can take away; and the case of Hilton *v.* Guyot[1] itself decided that comity does not require us to do more by others than they do by us, and that therefore judgments rendered in any foreign country by the laws of which our own judgments are reviewable on the merits, are only *prima facie* evidence of the justice of the claims they represent.

The second point to observe is that it is undecided as yet in the United States whether foreign judgments may be impeached if procured by false and fraudulent representation and testimony in behalf of the judgment creditor where the same question of fraud was passed on by the foreign court in giving judgment; but that, while the principle of Hilton v. Guyot makes impeachable for fraud in obtaining them the judgments of English and other foreign courts which hold our own judgments impeachable for such fraud, sister-state judgments are not impeachable for any fraud which was matter of defense in the original action,[2] nor for any other fraud which would not be good ground for defending against them at law or impeaching them in equity in the States where they were rendered.[3] Here, again, comity determines very largely the status of strictly foreign judgments, but has nothing whatever to do with that of sister-state judgments.

The third established doctrine to consider is the one early decided, that a sister-state judgment, like a strictly foreign judgment, is of no effect unless the court rendering it has jurisdiction.[4] This doctrine has been carried so far that

[1] (1895) 159 U. S. 113.

[2] Christmas *v.* Russell (1866) 5 Wall. 290; Maxwell *v.* Stewart (1874) 22 Wall. 77; Allison *v.* Chapman (1884) 19 Fed. 488; Union Trust Co. *v.* Rochester (1886) 29 Fed. 609; Barras *v.* Bidwell (1876) 3 Woods (U. S.) 5; U. S. *v.* Throckmorton (1878) 98 U. S., 61.

[3] Warrington *v.* Ball (1898) 90 Fed. 464; Ball *v.* Warrington (1901) 108 Fed. 472; Chadron Bank *v.* Anderson (1896) 6 Wyo. 518.

[4] D'Arcey *v.* Ketchum (1850) 11 How. 165.

in deciding that one State need not enforce the judgments of a sister-state which are penal in the international sense, the United States Supreme Court, by saying that a State court has no jurisdiction of such sister-state judgments, practically asserted that a State could not enforce penal sister state judgments if it wanted to.[1] This last assertion would certainly seem to be wrong. But it is undoubtedly law that the provision in the fifth amendment, forbidding the United States, and that in the fourteenth amendment, forbidding the States, to deprive any person of life, liberty or property without due process of law, makes it impossible for either Congress or the States to make valid, as a personal judgment, one recovered after service by publication only and no appearance, or valid as a judgment in *rem*, one recovered where there was no jurisdiction of the subject matter.[2] Unless jurisdiction of the person is obtained there cannot be a valid personal judgment, and unless jurisdiction of the subject matter is obtained, there cannot be a valid judgment in *rem*; and that is as true of sister-state judgments as it is of strictly foreign judgments. The cases on that proposition are many.[3] So, while there was early a dispute as to whether where a sister-state judgment recited jurisdictional facts, the non-existence of those facts could be shown,[4] it was settled by Thomson v. Whitman,[5] since several times affirmed, that the full faith and credit clause did not prevent the contradiction and disproval of necessary jurisdictional facts recited in a sister-state judgment. That being so, any court which refuses to allow such contradiction in an action on the judgment is really violating the United States constitution by depriving

[1] Wisconsin *v.* Pelican Ins. Co. (1888) 127 U. S. 265.

[2] Pennoyer *v.* Neff (1877) 95 U. S. at pp. 733–734.

[3] See an article by the present writer in 38 American Law Review at pages 354 to 358, where a number of the cases are collected.
By far the most interesting case on the subject of jurisdiction is Andrews *v.* Andrews (1902) 188 U. S. 14 (since affirmed in German Savings and Loan Society *v.* Dormitzer (1904) 192 U. S. 125), for there the court had acquired jurisdiction of the parties by their appearance, but as it had not acquired jurisdiction of the *res* the judgment was a nullity.

[4] See cases collected in the American and English Encyclopædia of Law, 1st Ed., Vol. XII, pages 148x to 148z; 2nd Ed., pages 993 to 994.

[5] (1873) 18 Wall. 457.

the apparent judgment debtor of his property without due process of law.[1]

The fourth and last proposition to remember is that a State may prohibit any action on a foreign judgment—Texas did so before its annexation to the United States—,[2] but that while it may provide reasonable statutes of limitation for sister-state judgments[3] it cannot absolutely prohibit any action on such sister-state judgments,[4] unless such judgments are penal in the international sense,[5] or unless they are sued on by foreign corporations.[6]

(*c*) CONCLUSION.

Summing up what our review has shown us, we note:

First.—That the fundamental difference between strictly foreign judgments and those American judgments which we have denominated sister-state judgments lies in the fact that the standing of the former rests on comity while that of the latter is protected by constitutional and statutory provisions.

Second.—That Article IV, Sec. 1, of the United States Constitution, like its prototype in the Articles of Confederation, was framed for the express purpose of giving sister-state judgments a favored footing over strictly foreign judgments, and that the acts of Congress carried out the pur-

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[1] See Pennoyer *v.* Neff (1877) 95 U. S. pages 733–734.

[2] Wilson *v.* Tunstall (1851) 6 Tex. 222.

[3] McElmoyle *v.* Cohen (1839) 13 Pet. 312.

[4] Christmas *v.* Russell (1866) 5 Wall. 290; Keyser *v.* Lowell (1902) 117 Fed. 400.

[5] Wisconsin *v.* Pelican Ins. Co. (1888) 127 U. S. 265.
Penal judgments are excepted on historical grounds.

[6] Anglo American Provision Co. *v.* Davis Provision Co. (1903) 191 U. S. 373, affirming (1902) 169 N. Y. 506.
Judgments sued on by foreign corporations are excepted on the ground that a judgment owned by a foreign corporation is entitled to no faith nor credit because the corporation is not entitled to the privileges and immunities of a citizen; and it would seem to follow that if the foreign corporation should assign the judgment to a citizen it would, in the latter's hands, be given full faith and credit. It has been so decided in New York, Nazro *v.* McCalmont Oil Co. (1885) 36 Hunn 296. This is undoubtedly true where, under the law of the state in which the judgment is rendered, the title to the judgment passes by the assignment.
Martin *v.* Wilson (1903) 120 Fed. 202.

pose by providing a mode of authentication which, when resorted to, would entitle them to that favored footing.[1]

Third.—That Article IV, Sec. 1, of the United States constitution applies only to State judgments when proved in other States, but that the acts of Congress go farther and give effect to State judgments in the territories and insular possessions as well as in other States, and likewise, in aid of the general judicial power of the United States, give the same conclusive effect in the States to the judgments of our territorial and insular possession courts.

Fourth.—That by judicial legislation the judgments of United States courts are held to be as conclusive in the States as are sister-state judgments.

Fifth.—That the acts of Congress provide a mode of authentication which would seem erroneously to be deemed by some courts to be applicable to judgments of courts of record alone; and that since it has never been determined by the United States Supreme Court that Article IV, Sec. 1, of the Constitution is self-executing, there is a conflict of State authority as to whether a judgment of a Justice of the Peace of one State rendered with jurisdiction is conclusive evidence when proved in the courts of another.

Sixth.—That the favored standing of sister-state judgments does not exist as to certain strictly foreign judgments made conclusive by comity; does not extend to sister-state judgments rendered without jurisdiction over the person or the *res;* may not exist as to judgments obtained by fraud, except in cases where our own judgments, when sued on in the country from which the foreign judgment comes, are not protected from re-examination as to matters of fraud already passed upon by the courts rendering the judgments, and does not apply to sister-state judgments which are penal in the international sense, or which are sued on by foreign corporations.

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[1] "Foreign judgments are authenticated: 1. By an exemplification under the great seal. 2. By a copy proved to be a true copy. 3. By the certificate of an officer authorized by law, which certificate must itself be properly authenticated. These are the usual, and appear to be the most proper, if not the only, modes of verifying foreign judgments."—Chief Justice Marshall in Church *v.* Hubbart (1804) 2 Cranch 238.